

# Keeping women off the jury in 1920s England and Wales

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*The Sex Disqualification (Removal) Act 1919 ended the prohibition on female jurors. This did not mean that English and Welsh juries became representative institutions overnight, however: the property qualifications ensured that juries were still drawn from the top few per cent of the local population; and the 1919 Act expressly permitted trial judges to order single-sex juries where the nature of the evidence required it. The continued existence of peremptory challenges allowed defendants in felony trials to exclude women from their juries whenever they preferred to be tried only by men. Finally, some judges permitted female jurors to excuse themselves from particular trials if they so desired. This paper explores the effects these factors had on the practical enjoyment of the female jury franchise after the passing of the 1919 Act. It finds that the picture is remarkably localised: rates of women serving on juries were very different for the five assize circuits for which adequate records exist (Midland, Oxford, South Eastern, South Wales and Western). By exploring these issues, this paper reveals how flexible the female jury franchise was in its early years, and shows how important local differences were in keeping women off the jury.*

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## INTRODUCTION

As we approach the centenary of the female jury franchise in England and Wales, it is surprising how little has been written on its early history. Previous academic work has explored the role of feminist movements in campaigning against those rules – primarily the property qualifications and peremptory challenges – which kept women off the jury.<sup>1</sup> This paper focuses on the part that lawyers, officials and female jurors themselves played in the early years of female jury service. There were, as we shall see, different

\* This research was funded by a British Academy/Leverhulme Trust Small Research Grant, and by Newcastle University's Faculty Research Fund. I am grateful for the helpful comments on earlier drafts of this paper received at the Osgoode Society Legal History Workshop in March 2016, at the Socio-Legal Studies Association conference in April 2016 and at the Society of Legal Scholars conference in September 2016. I am also grateful to Ann Sinclair for assistance with literature searches, and to *Legal Studies*' two anonymous reviewers for their helpful comments on an earlier draft of this paper.

1. In particular, A Logan *Feminism and Criminal Justice: A Historical Perspective* (Basingstoke: Palgrave Macmillan, 2008) pp 86–95; and A Logan "'Building a new and better order"? Women and jury service in England and Wales, c. 1920–70' (2013) 22 *Women's Hist Rev* 701.

levels of female participation in different regions, which can be partially explained by traditions of administrative independence among those calling jurors to serve. There were also differences dependent on the types of crime being tried. By exploring newspaper reports and other contemporaneous discussions of female jurors, it will be shown that some of these exclusions were closely tied to popular perceptions about women's acceptable public role. Finally, by exploring the way women represented their own experiences on juries, we shall see how some female jurors' dislike of particularly brutal trials was seized upon as a way of demonstrating that women were unsuited for their new judicial task.

In the 1918 general election – the first to be held since 1910, and the first to be held since the admission of some women to the parliamentary franchise<sup>2</sup> – the Conservative Party manifesto had contained the pledge that 'It will be the duty of the new Government to remove all existing inequalities between men and women'.<sup>3</sup> The Labour opposition – which had positioned itself in its manifesto as 'the Women's Party'<sup>4</sup> – sought to remove such inequalities through its own Bill. The Women's Emancipation Bill sought to end the prohibitions on women holding civil and judicial posts; to equalise the parliamentary franchise as between men and women; and to end the prohibition on women sitting in the House of Lords.<sup>5</sup> When the Emancipation Bill passed in the Commons, the government quickly introduced its own Bill – the Sex Disqualification (Removal) Bill – which would achieve the first of the three aims of the Labour Bill, but not the second or third. The 1919 Act has subsequently been characterised as an ineffective piece of legislation, which failed to secure for women a place in the senior civil service, for example,<sup>6</sup> and which was rarely considered by appellate courts.<sup>7</sup> As Logan has shown, however, the Act did allow for women to join – and to change – the magistracy fairly rapidly.<sup>8</sup> But in subsequent work, she has shown how many women's groups did not consider the Act to have adequately secured the right of women to serve on juries.<sup>9</sup>

How did the legal framework surrounding the newly established female juror actually work? The Chief Justice, Lord Reading, had insisted a special judicial power must be created to order a single-sex jury 'by reason of the nature of the evidence to be given or of the issues to be tried';<sup>10</sup> and the parties in felony trials retained a right to 'preemptorily' challenge jurors,<sup>11</sup> removing them without needing to explain their

2. Representation of the People Act 1918.

3. 'Conservative Party General Election Manifesto 1918' in I Dale (ed) *Conservative Party General Election Manifestos 1900–1997* (London: Routledge, 2000) p 21.

4. 'Labour Party General Election Manifesto 1918' in I Dale (ed) *Labour Party General Election Manifestos 1900–1997* (London: Routledge, 2000) p 18.

5. *Hansard* HC Deb, vol 144, col 1561, 4 April 1919.

6. M Zimneck 'Strategies and stratagems for the employment of women in the British Civil Service, 1919–1939' (1984) 27 *Hist'l J* 901 at 908–909.

7. FAR Bennion 'The Sex Disqualification (Removal) Act – 60 inglorious years' (1979) 129 *New L J* 1088. As we shall see below, the Act was actually relied upon in the appellate courts more than Bennion recognised: there was at least one decision of the Court of Criminal Appeal that concerned s 1(b) of the Act.

8. A Logan 'Professionalism and the impact of England's first women justices, 1920–1950' (2006) 49 *Hist'l J* 833; A Logan 'In search of equal citizenship: the campaign for women magistrates in England and Wales, 1910–1939' (2007) 16 *Women's Hist Rev* 501.

9. Logan, above n 1.

10. Sex Disqualification (Removal) Act 1919, s 1(b).

11. Not completely abolished until the 1980s: Criminal Justice Act 1988, s 118(1).

objection. And even beyond these questions of the exclusion of women who were otherwise qualified as jurors, it is important to note that the vast majority of people – men and women – were not qualified to begin with, as at this time jury qualification was still tied to the possession of land. The Juries Act 1825 had set the relevant qualifications as: freehold, copyhold or customary tenure worth at least £10; leasehold (on at least a 21-year lease) worth at least £20; assessment to the poor rate or inhabited house duty of at least £20 (or £30 in Middlesex); or the occupation of a house containing at least 15 windows.<sup>12</sup> These qualification rules were not abolished until the 1970s<sup>13</sup> and, as we shall see below, they resulted in very few people in 1920s England and Wales being qualified to serve.

The 1825 legislation establishing the property qualifications for jury service had provided that towns ‘possess[ing] any jurisdiction, civil or criminal ... shall prepare their Panels in the manner heretofore accustomed’.<sup>14</sup> A 1913 inquiry had found there were still ten ‘assize boroughs’ which, having their own sessions independent of the county assizes, were exempt under the 1825 Act from observing the property qualifications.<sup>15</sup> This discretion was abolished almost exactly a year after the 1919 Act was passed, however,<sup>16</sup> and so by 1921 all trial jurors had to satisfy the property qualifications. As Lord Devlin put it in 1956:

The jury ... is predominantly male, middle-aged, middle-minded and middle-class ... It is the property qualification that makes it chiefly male simply because there are far fewer women householders than there are men.<sup>17</sup>

Clearly, a system involving property qualifications, a judicial power to order single-sex juries and peremptory challenges had at least the potential to exclude many women from jury service. The extent to which it actually did so was, as we shall see, something that differed from region to region.

England and Wales was not the only jurisdiction that had opened jury service to women during the first half of the twentieth century, but neither was it the only place where the reforms had been somewhat limited in practice. Despite the significant differences between English and Scottish juries (their larger size, for example, and the different types of verdict which can be returned),<sup>18</sup> the two systems shared perhaps two of the most significant means of keeping women off the jury: peremptory challenges and the judicial discretion under the 1919 Act to order a single-sex jury. While research detailing the appearance of women on Scottish juries during the period under discussion here has yet to be conducted, it is likely that female jury service in Scotland was broadly similar in practice to the system as it worked itself out in England. In Northern Ireland, the institution of female jurors was certainly controversial. In 1923, the Crown clerk of County Down asked an official inquiry into jury service to consider

12. Juries Act 1825, s 1. Separate qualifications had been set for Welsh juries, although these were repealed by the Juries Act 1870, s 7.

13. Criminal Justice Act 1972, Sch 6; Juries Act 1974, s 1.

14. Juries Act 1825, s 50.

15. See Lord Mersey (Chair) *Report of the Departmental Committee Appointed to Inquire into and Report upon the Law and Practice with Regard to the Constitution, Qualifications, Selection, Summoning, &c. of Juries*, vol 2 Cd 6818, 1913, pp 182–183.

16. Juries (Emergency Provisions) Act 1920, s 2.

17. P Devlin *Trial By Jury* (London: Stevens & Sons, 1956) p 20.

18. See generally P Duff ‘The Scottish criminal jury: a very peculiar institution’ in N Vidmar (ed) *World Jury Systems* (Oxford: Oxford University Press, 2000).

adding women to the list of people legally entitled to seek exemption;<sup>19</sup> and as late as 1929 Wilson J complained that it was ‘ridiculous’ to keep on summoning women for jury service when they were systematically challenged off the jury either by the prosecution or by the defence. ‘He could not excuse their attendance, but unless counsel sternly objected he thought he would tell them he would not fine them if they did not come.’<sup>20</sup> In the Republic of Ireland, women had gained the right to serve as jurors in 1927, albeit with the proviso that they had both to satisfy variable local property qualifications and to make a specific request to be included in the juror lists.<sup>21</sup> These rules survived until 1976, when the Irish Supreme Court held that the rules, which had resulted in only two women serving during the previous decade, were an unconstitutional restriction on equality and on the representativeness implicit in the concept of jury trial.<sup>22</sup>

Unlike some jurisdictions, which had granted the jury franchise only to those women who had specifically asked to be registered, jury service for the qualified women of England and Wales was technically compulsory. In practice, however, English judges frequently asked women if they wanted to serve on particular trials. While this paper focuses primarily on England and Wales, similar practices were also known elsewhere. As early as February 1921, the *Northern Whig* reported suggestions in the Belfast Recorder’s Court that a greater proportion of men should be summoned. A judge of the Recorder’s Court had noted that ‘in the case of female jurors who had imperative household duties he would be disposed to exercise his privilege in favour of exemption if appealed to’.<sup>23</sup> Two years later, defence counsel in a Belfast murder trial successfully requested a judicial order for an all-male jury.<sup>24</sup> One of the main focuses of this paper will be the extent to which these kinds of judicial and administrative practices might have led to a selective, variable implementation of the 1919 Act’s lifting of the prior ban on female trial jurors in England and Wales.

By using court records held at the National Archives, it has been possible to take a systematic approach to the ‘mixed’ juries of the 1920s, exploring the relationship between public debates about female jurors and the actual practices of the courts. This paper focuses on five regions of England and Wales: in England, the Midland, Oxford, South Eastern and Western assize circuits; and in Wales the South Wales circuit. In North-East England, and in North Wales, individual jurors are not named in the assize court records of the 1920s, making it impossible to reconstruct the gender composition of their juries in individual trials;<sup>25</sup> while the relevant records

19. ‘The Jury System Inquiry: women representation discussed’ *Northern Whig and Belfast Post* (Belfast) 12 June 1923 at 9.

20. ‘Women jurors: “ridiculous bringing them when not asked to serve”’ *Northern Whig and Belfast Post* (Belfast) 13 December 1929 at 10.

21. [Irish] Law Reform Commission *Consultation Paper: Jury Service* LRC CP 61-2010, 2010, para 1.40.

22. *De Burca and Anderson v Attorney General* [1976] IR 38; discussed in K Quinn ‘Jury trial in Republic of Ireland’ (2001) 72 *Rev Int’le Droit Pénal* 197 at 203–204.

23. ‘Belfast Recorder’s Court: criminal business resumed’ *Northern Whig and Belfast Post* (Belfast) 18 February 1921 at 7.

24. ‘Belfast death sentence: the trial in detail’ *Weekly Telegraph* (Antrim) 13 January 1923 at 12.

25. *Crown Minute Book: North Eastern Circuit 1921–1924* (ASSI 41/32), 1924–1928 (ASSI 41/33) and 1928–1931 (ASSI 41/34); *Crown Minute Book: North and South Wales Circuit, Chester and North Wales Division 1918–1929* (ASSI 61/29) and 1929–1938 (ASSI 61/30). Unless stated otherwise, all archival references are to files held at the National Archives.

for North-West England do not appear to have survived. This paper, therefore, draws on data from all of England and Wales south of Yorkshire, Cheshire and Montgomeryshire, excluding London.<sup>26</sup>

This paper is limited to the assizes, where the most serious offences were tried, usually presided over by High Court judges, rather than the courts of quarter sessions, where juries sat with local judges.<sup>27</sup> This is because assize records are held centrally at the National Archives, while quarter sessions records are held at local archives. It is therefore impossible to be systematic regarding the quarter sessions without visiting every local archive to see whether lists of quarter sessions jurors have survived. Finally, this paper only considers trial juries in criminal, rather than in civil trials, because again the records for the civil part of assize business are insufficiently complete.<sup>28</sup> Despite these limitations, this paper draws on almost 5000 criminal trials, adding real depth to our understanding of this crucial part of women's citizenship in the decade after a partial parliamentary franchise had been won.

In section 1, this paper sets female jury service within the context of a wider public debate about women's public role, particularly in the criminal justice system, and particularly in their capacity as judges (specifically, as magistrates and as jurors). Sections 2, 3 and 4 draw on various official publications and archival sources in order to explore the ways in which this public debate mapped on to what was actually happening in the courts. Section 2 draws on judicial statistics for the 1920s in order to trace the declining proportion of jurors summoned who were women, and compares this to the numbers of women per jury per trial in the various assize regions for which adequate records exist, showing that there was a similar decline in the number of women actually serving on specific juries, but also that there were marked regional variations. It ends by surveying the electoral registers for three English towns from spring 1925 and comparing the gender composition of those *qualified to serve* (denoted in the registers by a 'J' or an 'SJ') to those recorded in the assize books as *serving jurors*. This survey of three English towns finds no relation between the gender compositions of the juror pools and of actual juries, suggesting demographics are unlikely to account for the regional variations in female jury service at the assizes. Sections 3 and 4 explore potential reasons for the regional variations, drawing primarily on the assize records themselves (which occasionally record why it was that a pre-existing jury lost all its female members before moving on to a new trial) and on contemporaneous newspaper reports (which occasionally explore the underlying assumptions of court officials, lawyers and female jurors themselves). These sections find that as well as peremptory challenges and judicial orders for single-sex juries, women were often encouraged – in a far less formal way – to excuse themselves; and that the types of trial from which women were excluded varied from region to region. In other words, the strategies for keeping women off the jury after 1919 were not solely legalistic, and were informed by variable local attitudes to women's acceptable public roles.

26. London's female jurors have recently been explored in a paper looking at the Old Bailey between 1918 and 1926: S Anwar, P Bayer and R Hjalmarsson 'A jury of *her* peers: the impact of the first female jurors on criminal convictions' (2016) NBER Working Paper No 21960; available at <http://www.nber.org/papers/w21960> (accessed 20 July 2016).

27. See generally AH Manchester *A Modern Legal History of England and Wales 1750–1950* (London: Butterworths, 1980) pp 162–166.

28. For the five circuits covered, the civil minute books do not generally name individual jurors.

## 1. THE PUBLIC DEBATE OVER FEMALE JURY SERVICE

During the 1920s, public responses to the introduction of female trial jurors formed part of the general debate about newly enfranchised women. As Logan in particular has noted, organised women's groups had led the way for many important changes within the criminal justice system more generally. The fact that today's magistrates receive regular professional training, for example, can be directly traced back to the decision among many of the first female JPs that they should organise some formal training for themselves.<sup>29</sup> But just as female politicians had found themselves frequently confined to – as well as campaigning on – apparently 'feminine' issues (education, public health, amenities such as washhouses and public parks),<sup>30</sup> the new female magistrates were also frequently understood to be experts in juvenile justice.<sup>31</sup> While it would be tempting to dismiss this simply as evidence of women being ideologically restricted to 'maternal' roles, Logan reminds us that these practices also had the 'potential for widening eventually what was regarded women's proper sphere and for drawing individual women into the realms of public policy hitherto dominated by men'.<sup>32</sup> And there was also an important strategic element in women's groups' focus on their members' presumed expertise in traditionally feminine matters. These strategies had to be developed in order to 'combat a range of negative images of women philanthropists and social workers that suggests that even seemingly uncontroversial, gendered claims to special talents and abilities could face outright male hostility'.<sup>33</sup> As we shall see below, similar arguments were frequently made about women on juries: that their presumed expertise in particular matters, or experience with particular types of people, made them essential in particular kinds of trial.

That such arguments might be considered necessary can be seen in the way Home Office officials had responded to Lord Reading's proposed judicial power to order single-sex juries:

So long as the Bar is composed wholly of men the ensuing debate [in an individual trial] is likely to be carried on without any unseemly intrusion of sex-'prejudice', but 'feminists' will make sure that in a few years there is a sufficient supply of female barristers to argue the question with the acrimony and heat which 'feminists' are apt to import into all their controversies. Again when a woman is to be tried for the murder of her illegitimate baby there will be a female barrister first to claim that she should be tried by women only and then to challenge any juror who does not belong to a 'feminist' society.<sup>34</sup>

Female jurors, on this account, were part of a more general feminist invasion of exclusively male public spaces, and the Chief Justice's amendment – permitting judges to order single-sex juries either on their own initiative or following a submission from either of the parties – unwisely allowed women to contest such issues in open court.

29. Logan, 'Professionalism', above n 8.

30. P Hollis *Ladies Elect: Women in English Local Government, 1865–1914* (Oxford: Clarendon Press, 1987) pp 422–460.

31. A Logan "'A suitable person for suitable cases": the gendering of juvenile courts in England, c 1910–1939' (2005) 16 *Twentieth Century Br Hist* 129.

32. Logan, *Feminism and Criminal Justice*, above n 1, p 47.

33. *Ibid*, p 48.

34. Minute by HB Simpson, 31 October 1919 (HO 45/13321/8).

'How many Judges or Ch'n of QS', the note continued, 'will there be able to maintain an orderly and impartial procedure?'<sup>35</sup> While early female barristers occasionally responded to this kind of attack by de-emphasising their femininity (something they were no doubt encouraged to do by the Inns' decision to closely regulate their dress),<sup>36</sup> many of the public arguments made in favour of female jurors took the opposite approach, maintaining that they were needed precisely because they could add a valuable, distinctly feminine perspective to jury trials.<sup>37</sup>

As with other women's 'firsts',<sup>38</sup> the press followed the new 'mixed' juries with great interest, telling us for example that three women were summoned to the Colchester quarter sessions as early as April 1920, but that the prisoner 'objected to being tried by women, and the three jurors therefore withdrew'.<sup>39</sup> As the prisoner was being tried for a felony (feloniously receiving a bicycle), however, he was not required to provide any more precise explanation for what was presumably a peremptory challenge. By September 1920, the *Derby Evening Telegraph* was complaining that men would be delighted to cede the burden of jury service to women, if only female jurors could be trusted to endure it. Discussing a recent Manchester trial for malicious wounding, in which a female juror had fainted, the paper complained that all men 'want to avoid is having to perform the work twice over because a lady member chances to fall out in the middle of a case'.<sup>40</sup> The opposition to female jurors meant that, if the Sex Disqualification (Removal) Act was ever to 'get outside its brackets',<sup>41</sup> something more than legislation might be required: in addition, legal and administrative cultures would need to accept the reform. One common argument among those seeking to persuade the public of the advantages of female jurors was that women were needed as magistrates or as jurors wherever women were directly involved,<sup>42</sup> not only in order 'to see that justice is done',<sup>43</sup> but also because women were better placed than men to evaluate female

35. Ibid.

36. R Pepitone 'Gender, space and ritual: women barristers, the Inns of Court, and the interwar press' (2016) 28 *J Women's Hist* 60.

37. Such arguments were made by many groups, from First World War Istria to 1940s Vermont: D Pastović "'Defect of sex": exclusion of women from jury service in Istria 1873–1918' (2016) 7 *J Eur Hist L* 155 at 164–165; HJ McCammon *The US Women's Jury Movements and Strategic Adaptation: A More Just Verdict* (New York: Cambridge University Press, 2012) pp 122–131.

38. A Bingham 'Enfranchisement, feminism and the modern woman: debates in the British popular press, 1918–1939' in JV Gottlieb and R Toye (eds) *The Aftermath of Suffrage: Women, Gender, and Politics in Britain, 1918–1945* (Basingstoke: Palgrave Macmillan, 2013) p 95. See also V Brittain *Testament of Youth* (London: Virago, 2004; first published 1933) p 529.

39. 'Women on the jury: man prisoner's objection at Colchester' *Cambridge Daily News* (Cambridge) 28 April 1920 at 3. For the apparently first women to actually serve, see 'Lady jurors' *Western Daily Press* (Bristol) 29 July 1920 at 5.

40. 'Women jurors vindicated' *Derby Daily Telegraph* (Derby) 11 September 1920 at 2.

41. Brittain, above n 38, p 534.

42. See eg M Garrett Fawcett 'To the Editor of The Times' *The Times* (London) 1 February 1921 at 10; 'Mixed juries: a women's rights view' *Yorkshire Post* (Leeds) 31 January 1921 at 6; 'Women as jurors' *Yorkshire Post* (Leeds) 15 March 1921 at 6. Judges also occasionally made this sort of argument: 'Women jurors in sexual cases: Mr Justice Shearman's view' *The Times* (London) 7 June 1921 at 7.

43. 'Women jurors' work' *Yorkshire Evening Post* (Leeds) 20 October 1920 at 4. On the jury as a political institution, see generally TA Green *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200–1800* (Chicago: University of Chicago Press, 1985).

witnesses' credibility.<sup>44</sup> A second common argument was that jury service was an important part of the citizenship which had been won through the parliamentary franchise.<sup>45</sup> This argument could cut both ways, however, and was often used as a way of rebuking women for presuming to the rights of citizenship without being willing to take on its burdens. We have already seen an early example of this argument in the *Derby Evening Telegraph* article above. But women's groups were also able to use ideas of citizenship to argue against the apparently common practice amongst lawyers of using their legal powers (in particular peremptory challenges and the judicial power to order a single-sex jury) to keep women off the jury,<sup>46</sup> noting that this practice undermined each of the arguments in favour of female jury service.

This debate was pursued not only in the press and public meetings, but also in short stories, plays and films. *Double Demon*, for example, imagined a jury including a husband and wife. The two squabble, and have little interest in their trial other than as a vehicle for taking opposing sides.<sup>47</sup> A more detailed indictment of female judgment came in Noël Coward's *Easy Virtue*, a play concerning Larita, a divorcee who had married a younger man. She offends her mother- and sisters-in-law by, among other things, discussing famous divorce trials with her father-in-law and reading Proust's *Sodom and Gomorrah*;<sup>48</sup> and she is eventually confronted by them when they discover newspaper cuttings concerning her divorce. Larita's father-in-law interrupts his female relatives to inquire whether 'it's quite fair ... to set ourselves up in judgment on Larita? We know none of the circumstances.'<sup>49</sup> The women continue their attack, however, and Larita explains their moral failings to them in much detail. Larita is the most clear-sighted person in the play, and is eventually forced out of the family by female relatives lacking her insight. In *Easy Virtue*, some women are capable of sound judgment, but women's upbringing generally undermines their capacity for rational thought.

Alfred Hitchcock's 1928 film version of Coward's play minimised the confrontation's nuance. Instead, a new opening scene, in which a mixed jury tries Larita's earlier divorce trial, conveys the film's central message about female judgment. Here, Hitchcock shows us a female juror's handwritten notes containing emotional observations such as 'Pity is akin to love', and ensures that the female jurors' reading of the evidence is more emotionally coloured than the males' reading.<sup>50</sup> The *Bucks Herald* called Hitchcock's film 'The story of a beautiful woman, who suffered ... the misfortune to appear in the Divorce Court before women jurors less attractive than

44. See eg 'Mixed juries', above n 42; 'Women as jurors', above n 42; 'Labour Women's Conference: lively discussion on women jurors' *Yorkshire Post* (Leeds) 28 April 1921 at 3.

45. See eg 'Mixed juries', *ibid*; 'Women as jurors', *ibid*.

46. See eg 'Women's Council and women jurors: "false conception of delicacy"' *Evening Telegraph* (Dundee) 9 March 1921 at 3; 'Women as jurors', *ibid*; 'Women's reform campaign' *Lincolnshire Echo* (Lincoln) 13 February 1926; 'Silly, sentimental ways of men: women teachers demand equality' *Evening Telegraph* (Dundee) 6 January 1927 at 4.

47. AP Herbert 'Double Demon: an absurdity in one act' in *The British Drama League Library of Modern British Drama No. 7: Four One-Act Plays* (Oxford: Basil Blackwell, 1923).

48. Famous divorce trials had, themselves, been used to rebuke 'modern' women: L Bland *Modern Women on Trial: Sexual Transgression in the Age of the Flapper* (Manchester: Manchester University Press, 2013) pp 176–209.

49. N Coward *Easy Virtue: A Play in Three Acts* (London: Ernest Benn, 1926) p 84.

50. A Hitchcock (director) *Easy Virtue* (1928); available at <https://archive.org/details/EasyVirtue1928> (accessed 18 July 2016).



herself',<sup>51</sup> while the *Bury Free Press* noted 'the women jurors were careful to see that the innocent woman did not escape!'<sup>52</sup> and the *Northern Whig* said that the film 'shatters the claim that women are sufficiently fair to be trusted in Divorce Court proceedings'.<sup>53</sup> The contemporary press understood Hitchcock's film as a critique of the wisdom of allowing women to sit in judgment.

Other literature was less critical of the introduction of female jurors. In an account attributed to 'A Woman-Juror', published in the literary magazine *The Adelphi*,<sup>54</sup> we see the incredulity of two men when asked by a woman where jurors are supposed to go. Counsel, however, addresses the jurors as 'Members of the Jury, – not ladies and gentlemen, but just members; things without sex; intelligences; I liked that.'<sup>55</sup> The male jurors also treat the women fairly. Here, women don't add very much to juries. What is added, however, is official support to the proposition that women are men's equals. The one-act play *The Woman Juror*,<sup>56</sup> meanwhile, begins with two women (a young woman and her fiancée's mother – an intergenerational set-up shared with *Easy Virtue*) discussing the merits of female jury service. The younger woman explains that she has served on a jury, where the evidence she heard required her to reluctantly vote to convict a former soldier, one of her wartime Red Cross patients. When the older woman argues that courts are an unsuitable place for a 'girl' like her, the younger woman counters that girls younger than her are taken there for trial.<sup>57</sup> Later, alone in her flat, the younger woman is confronted by her former patient, who has escaped from prison. He ties her up and demands money; but she persuades him to release her, and subsequently promises to help him properly if he returns the following day. Here, a female juror is split between her duty to the law and her social or caring duties.

Finally, a 'mixed' jury's deliberations were dramatised in the version of Marie Belloc Lowndes' *What Really Happened* (in which a woman is falsely accused of murdering her husband), which was serialised in the *Sunday Post* in 1926. Among the jurors was a woman 'well known in that world ... which actively concerns itself with various forms of social service and local government'.<sup>58</sup> As Hollis has shown, there were many such women, frequently holding elected office, well before 1918;<sup>59</sup> although this woman's commitment to public service had initially been considered 'an eccentric adventure ... [H]ow amazed her critics of long ago would have been had an angel come and told them that Nora Norwich would one day sit on a mixed jury of men and women in a great murder trial.'<sup>60</sup> The foreman, meanwhile, was an 'energetic little man, a good public speaker, and a zealous, hard-working member of innumerable committees'.<sup>61</sup> As the deliberations begin, two male jurors debate the

51. 'The Pavilion' *Bucks Herald* (Aylesbury) 13 April 1928 at 5.

52. 'The Central Cinema: popular "turns" to be introduced' *Bury Free Press* (Bury St Edmunds) 26 May 1928 at 5.

53. 'Next week's amusements: local attractions on stage and screen' *Northern Whig* (Belfast) 21 April 1928 at 11.

54. A Woman-Juror 'On a jury' (1924) 2(3) *The Adelphi* 197.

55. *Ibid.*, at 202.

56. EF Parr *The Woman Juror: A Play in One Act* (London: Samuel French, 1922).

57. *Ibid.*, p 8.

58. M Belloc Lowndes *What Really Happened*, *Sunday Post* (Glasgow) 10 October 1926 at 8.

59. Hollis, above n 30.

60. Belloc Lowndes, above n 58, at 8.

61. *Ibid.*, at 8.

evidence, while a female juror introduces the story of her nephew's having been strangled by his nursemaid decades earlier. The foreman dismisses her story as irrelevant, but is to his surprise rebuffed by the other jurors. Norwich then gathers together the evidence against a guilty verdict, and the jurors vote to acquit. *What Really Happened* dramatically reconstructed the common argument that women were needed on juries because of the breadth of their experiences, experiences that were particularly important where a woman was being tried.

## 2. THE GENDER COMPOSITION OF THE ASSIZE JURIES

How many women were actually summoned for jury service? As Table 1 shows, drawing on the civil judicial statistics for England and Wales, in those jurisdictions that used sheriffs to summon their jurors there were, on average, 3.2 women for every 12 jurors summoned in 1922, a rate that fell steadily, until by 1929 it was as low as 2.7 in every 12. In those towns where jurors were summoned by the borough clerk of the peace, rather than by a sheriff, the representation of women on jury panels was noticeably higher. In 1922, there were on average 4.4 women among every 12 borough jurors; a rate that had, again, fallen to 3.0 by 1929. The higher rate of women among the borough jury pools could be explained by the fact that local officials were required to summon at least 14 female jurors for each panel;<sup>62</sup> a requirement that may have lifted the average significantly in less busy courts (which the borough assize courts certainly tended to be), as they often needed to summon only a small number of jurors.

The Crown minute books for the assize circuits studied in this paper paint a similar picture, of local variation and of decline, regarding the female jurors who made it out of the panel and on to an actual jury. As Table 2 shows, there was a striking difference between the trial juries' gender composition at the various circuits. In the Midland and Oxford circuits (comprising the Midlands), the representation of women on assize juries was much higher than in South Wales and in the South Eastern and Western circuits (comprising the South of England minus London). In all five of these regions, the average gender composition of the assize juries steadily became more male as the decade continued; although by 1929 the average number of women on juries in the Midlands was still roughly double that seen elsewhere. As with the women summoned, the number of women serving steadily declined as the decade continued; and some regions, despite this overall decline, had many more women on their juries than others. As historians tracing the histories of the first female barristers have found, women's formal acceptance depended to a great extent on how they were viewed by those already working within a particular circuit.<sup>63</sup> It may be that what we are seeing here, in the assize juries, is further evidence of the ways in which different circuits responded to the admission of women into the law.

62. 'The Rules of the Supreme Court (Women Jurors), 1920', s 3 (National Archives: LCO 2/559).

63. On circuit rules generally, see R Cock 'The Bar at assizes: barristers on three nineteenth century circuits' (1976) 6 *Kingston L Rev* 36. For the admission of women to particular circuits, see C Corcos 'Portia Goes to Parliament: women and their admission to membership in the English legal system' (1998) 75 *Denv U L Rev* 307 at 398–399; P Polden 'Portia's progress: women at the Bar in England, 1919–1939' (2005) *Int'l J Legal Prof* 293 at 323–324; and J Bourne 'Helena Normanton and the opening of the Bar to women' PhD thesis, King's College London (2014) at 195–196.

Table 1: The average number of female jurors for every 12 jurors summoned, 1922–1929<sup>a</sup>

	Sheriffs	Borough clerks
1922	3.2	4.4
1923	3.0	3.7
1924	2.9	3.5
1925	2.9	3.3
1926	2.8	3.2
1927	2.8	3.1
1928	2.7	3.1
1929	2.7	3.0

Sources: *Judicial Statistics, 1922–1929: Judicial Statistics (England and Wales for 1922, Civil) (Annual Report)* (Cmd 2001, 1923) p 43; *Judicial Statistics (England and Wales for 1923, Civil) (Annual Report)* (Cmd 2277, 1924) p 45; *Judicial Statistics (England and Wales for 1924, Civil) (Annual Report)* (Cmd 2494, 1925) p 46; *Judicial Statistics (England and Wales for 1925, Civil) (Annual Report)* (Cmd 2717, 1926) p 47; *Judicial Statistics (England and Wales for 1926, Civil) (Annual Report)* (Cmd 2971, 1927) p 47; *Judicial Statistics (England and Wales for 1927, Civil) (Annual Report)* (Cmd 3174, 1928) p 48; *Judicial Statistics (England and Wales for 1928, Civil) (Annual Report)* (Cmd 3426, 1929) p 49; *Judicial Statistics (England and Wales for 1929, Civil) (Annual Report)* (Cmd 3649, 1930) p 50.

<sup>a</sup>Note that the civil statistics for 1921 were not published.

Table 2: The average number of female jurors per trial in the five circuits studied, 1921–1929

	Midland	Oxford	South Eastern	South Wales	Western
1921	3.3	2.9	2.0	2.0	1.3
1922	2.5	2.4	1.6	1.6	1.3
1923	2.8	2.3	1.6	1.6	1.5
1924	2.2	1.6	1.3	1.7	1.1
1925	1.9	1.8	1.5	1.5	1.2
1926	1.8	1.7	1.1	1.5	–
1927	1.7	1.9	1.1	1.3	–
1928	1.6	2.0	1.2	1.3	–
1929	2.0	2.4	1.3	0.8	–

Sources: Crown minute books for the Midland, Oxford, South Eastern and South Wales Circuits, 1921–1929; Western Circuit, 1921–1925: *Crown Minute Book: Midland Circuit 1919–1921* (ASSI 11/42), *1921–1924* (ASSI 11/43), *1924–1927* (ASSI 11/44) and *1927–1930* (ASSI 11/45); *Crown Minute Book: Oxford Circuit 1921–1926* (ASSI 2/51) and *1926–1933* (ASSI 2/52); *Crown Minute Book: Oxford Circuit (Second Court) 1889–1951* (ASSI 3/4); *Crown Minute Book: South Eastern Circuit 1919–1922* (ASSI 31/54), *1922–1924* (ASSI 31/55), *1924–1927* (ASSI 31/56) and *1927–1930* (ASSI 31/57); *Crown Minute Book: South Eastern Circuit (Second Court) 1885–1951* (ASSI 32/52); *Crown Minute Book: North and South Wales Circuit, South Wales Division 1920–1922* (ASSI 76/18), *1922–1925* (ASSI 76/19A), *1925–1927* (ASSI 76/19B) and *1927–1930* (ASSI 76/20); *Crown Minute Book: Western Circuit 1920–1922* (ASSI 21/85), *1922–1925* (ASSI 21/86) and *1925–1930* (ASSI 21/87).

The picture was very different in London. Anwar, Bayer and Hjalmarsson have found that, at the Old Bailey, female membership of juries grew steadily from an average of approximately 1.5 women per jury in 1921 to a little over 2 per jury in

1926.<sup>64</sup> This puts the Old Bailey in the middle of the distribution seen at the five circuits covered in this study, and the fact that female participation at the Old Bailey was rising at a time when it was falling elsewhere also distinguishes provincial juries from those empanelled in the capital. For the six regions for which data is available, then, different patterns are clearly discernible for each area. This suggests that the female jury franchise was not solely dependent on the rules set out in legislation and other official documents; and it raises the question of what other factors were involved in the actual enjoyment of the female jury franchise, if not simply the law in the books.

Why might there be such regional variability? One possibility is that local officials working in different areas had different attitudes to the introduction of female jurors.<sup>65</sup> In the Midland circuit, where there was the highest proportion of female jurors for most of the decade, the assize clerk specifically noted significant milestones in his circuit's use of female jurors. In fact, he went so far as to paste or transcribe occasional newspaper reports into what was really meant as a minimal administrative record (the minute books for criminal trials), writing corrections next to articles where they had misrepresented the progress of female jurors in the circuit.<sup>66</sup> In the Western circuit, typically only around five juries per year are named after 1925 (although the number of jury trials does not markedly decrease); and it should be noted in this connection that the long-standing clerk of indictments had died and been replaced in the summer of 1924. While this says nothing directly about female jurors, it does suggest that administrators had a wide discretion regarding the discharge of their duties. The clerk of indictments for the Oxford circuit had also died during the winter 1922 assizes, and his replacement was appointed at the start of the summer 1923 assizes. It is notable here that female representation on Oxford circuit assize juries falls off markedly from 1924. This hints at one of the broader themes of this paper: that local administrative practices, and local habits more generally, continued to impact upon the composition of assize juries, even after government had attempted to guarantee a consistent national system by abolishing the assize boroughs' discretion regarding juror qualification and summoning practices.

Is it possible that there were simply more women qualified for jury service in some areas than in others? In order to answer this question, the electoral register for spring 1925 (the middle of the period under discussion here) has been consulted for three English towns, each from a different assize circuit.<sup>67</sup> In Bristol (Western circuit),

64. Anwar et al, above n 26.

65. In other words, local officials had a great deal of discretion regarding the discharge of their duties. On the development of the clerk of assize and other related local officials, see JS Cockburn *A History of English Assizes 1558–1714* (Cambridge: Cambridge University Press, 1972) pp 70–84.

66. See eg winter 1921 Buckinghamshire assizes, in *Midland Circuit 1919–1921*, unpaginated. The clerk actually responds to a handwritten note written by another official, but the first official's notes appear to have been copied out from a newspaper report (see the passage transcribed by the same official on the following page).

67. The fact that people could still be registered at multiple addresses at this time means that there is some slight overlap in the figures below, where for example a person is registered both at their home and at their business. The numbers of such double-registered people appear to be reasonably small, however. Furthermore, the fact that such double-counting happened both for jurors and for non-jurors means that any attempt to exclude duplicates from the analysis would require the identification of each duplicate among the nearly 400,000 individuals – jurors and non-jurors – named in the electoral registers consulted. For this reason, a small amount of overlap has to simply be acknowledged as a limitation of the method used.

8522 of its 197,052 registered voters were qualified as common or special jurors, making jury service the preserve of the top 4.3% of the city's voters. Of those qualified as common jurors (special jurors tended to be reserved for high-value civil disputes),<sup>68</sup> there were 6758 men and 1503 women, or 2.7 women for every 12. In Leicester (Midland circuit), 6434 of its 121,516 voters, or the top 5.3%, were eligible for jury service; and with 713 women and 4845 men qualified as common jurors, there were 1.8 women in every 12.<sup>69</sup> Finally, in Norwich (South Eastern Circuit), 2714 of the city's 63,573 voters were qualified to serve, amounting to the top 4.3%. Among the common jurors, there were 2160 men and 429 women, or 2.0 women for every 12. There was, it should be noted, little obvious relationship between the numbers qualified in a given town and the numbers actually serving. Leicester had the fewest women as a proportion of its total jury pool, but had the highest average number of women on its juries of the three, with an average throughout the decade of 3.1 women per jury. In Norwich, where the juror pool had a very similar gender composition to that of Leicester, there was an average of only 1.6 women per jury; while in Bristol, which had by far the highest proportion of women in its pool of possible jurors, the average jury contained only 1.3 women.<sup>70</sup> Demographics, then, were not a good predictor of female jury service.

### 3. WERE THE LAWYERS' POWERS TO REMOVE WOMEN FREQUENTLY USED?

Many trials at the 1920s assizes had no women on their juries. In fact, of the 4350 trials recorded in the minute books for which a jury is named (from the beginning of 1921, when female assize jurors first appeared outside the assize boroughs), 24% (1061) had all-male juries. How might this have happened? In her work on the debates concerning female jury service between 1919 and 1972, Logan has emphasised three central factors that feminist activists thought served to exclude women from juries.<sup>71</sup> The first is the property qualification. As we have seen in the survey of juror qualifications at Bristol, Leicester and Norwich, far fewer women than men were qualified for jury service. This necessarily led to a certain number of all-male juries: there were so few women available that chance alone would have produced some all-male juries. But it was not only the property qualifications that guaranteed that so few women actually served. As Logan explains, two other factors enabled lawyers to remove many of those women who were otherwise qualified. Peremptory challenges allowed counsel to remove women from juries in felony trials without cause, and so too did the provision of the 1919 Act permitting single-sex juries to be ordered at the judge's discretion.

**68.** J Oldham 'Special juries in England: nineteenth century usage and reform' (1987) *J Legal Hist* 148.

**69.** The female juror rate at Leicester was a slightly lower 1.6 per 12 in 1921, which suggests that the overall decline in female jurors during the 1920s was probably not caused by post-war demographic changes.

**70.** It should be noted here that data for Bristol's juries, as for juries in the South Western Circuit generally, only goes up to the end of 1925. But given that female participation on assize juries was continuing to fall elsewhere between 1926 and 1929, it is likely that the true whole-decade average for Bristol was actually even lower than 1.3 women per jury.

**71.** Logan, *Feminism and Criminal Justice*, above n 1, pp 86–95; Logan, "'Building a new and better order'", above n 1, at 704–706.

How did these legal powers work in practice? In 1925, in *Vaquier*, Avory J had ordered an all-male jury in the trial of a man for poisoning a pub landlord. After conviction, *Vaquier* complained that the judge had had no good reason for exercising his power under s 1(b) of the 1919 Act (indeed, no reason seems to be recorded anywhere). Lord Hewart CJ, presiding over a busy Court of Criminal Appeal, ‘densely packed including, as usual, many women’,<sup>72</sup> held that

It is easy to conceive various grounds on which the discretion given to [the judge] by that section might have been exercised. It is neither useful nor convenient by illustration to use words which might seem to fetter the discretion which the section bestows. The discretion must be exercised judicially and, therefore, reasonably, and there is nothing in the circumstances of the case to show that Avory, J, did not properly exercise the wide discretion which the section conferred on him.<sup>73</sup>

In *Williams*, Lord Hewart ordered a retrial where a felony defendant had been denied his right to peremptorily challenge the only woman off his jury.<sup>74</sup> The Chairman of the Surrey sessions had held this was an improper reason to challenge a juror, but the Chief Justice explained challenges did not have to be made for any good reason. ‘He might have said, “I don’t like the expression on that person’s face.” (Laughter.)’<sup>75</sup>

While these lawyerly discretions could be shared with the parties (a defendant might ask her lawyer to move for a single-sex jury, for example), the jurors themselves were to have no formal say in their use. At Aylesbury in January 1921, three women were empanelled in the trial of a man for murdering his wife. One of the three – either Matilda Tuck, Annie White or Maud Stevenson – objected to women being on the jury in this kind of trial, and invoked the single-sex jury provision of the 1919 Act. McCordie J denied that he had the power to make the order that the juror sought, and added that he had no desire to set a precedent in favour of her argument.<sup>76</sup> Newspaper reports emphasised the distressing nature of the evidence subsequently heard at court (thereby making it a case that did, prima facie, satisfy s 1(b)), and the press subsequently asked one of the women – Matilda Tuck – about her experience. She explained that ‘the greatest ordeal was the first entry into Court. Once the case began we became more confident.’<sup>77</sup> As we shall see below, the press was often interested in any struggles female jurors may have had when trying particularly shocking cases. What makes this case so unusual is the thwarted attempt by a female juror to be involved in the gender composition issue – at least in a direct, legalistic way. In practice, women were frequently permitted to excuse themselves on the ground of pressing responsibilities such as the need to cook dinner;<sup>78</sup> they were not, however, permitted to excuse themselves through formal legal argument.

72. ‘*Vaquier*’s fight for life: appeal dismissed’ *Portsmouth Evening News* (Portsmouth) 28 July 1924 at 8.

73. *R v Vaquier* (1925) 18 Cr App R 112, 113. See also ‘*R v Mahon*’ *The Times* 20 August 1924 (CCA).

74. *R v Williams* (1927) 19 Cr App R 67.

75. ‘Objection to a woman juror: new trial to be held’ *Yorkshire Post* (Leeds) 8 December 1925 at 7.

76. ‘Exemptions refused women: three empanelled in murder trial’ *Lancashire Daily Post* (Preston) 14 January 1921 at 2.

77. ‘Women jurors’ ordeal: “guilty” verdict in murder trial’ *Dundee Courier* (Dundee) 19 January 1921 at 5.

78. ‘Town and district’ *Northampton Mercury* (Northampton) 25 October 1928 at 8.

It is unclear how frequently the judicial power to order a single-sex jury was actually used. Anwar et al only discovered 11 instances at the Old Bailey between 1921 and 1926, but surmised ‘it is possible ... that such requests were not always noted in the records’.<sup>79</sup> The picture is very similar in the five circuits studied here. In the all-male jury trial at the autumn 1920 Worcester assizes, for example, the reporter noted ‘In the above case [a trial for gross indecency with a male person], on account of the indecent character of the evidence, the learned Judge, at his own instance, ordered that the jury should be composed of men only.’<sup>80</sup> This kind of explicit reference to the judicial power to order a single-sex jury was rare, but for virtually all sexual offences that did not have a female victim, any women on a jury would usually be removed. In a trial for attempted unnatural offences with a sheep at the summer 1921 Cornish assizes, for example, two women, on a jury that had already returned two verdicts, were both replaced by men. The all-male jury, which otherwise remained unchanged, found the defendant guilty but insane, before trying a second man for sex with another man.<sup>81</sup> While there is no explicit mention of the judicial power here, the fact such offences were grouped together in the criminal statistics suggests that these trials may have been considered similar to the circumstances in which the power definitely was used at the autumn 1920 Gloucester assizes.<sup>82</sup>

What, then, of the defendant’s power to affect the gender composition of his or her jury through peremptory challenges? The Morris Committee concluded in 1965 that there was little evidence of their being used to systematically exclude women;<sup>83</sup> although in 1929, at the very end of our period, the Old Bailey’s Recorder had complained that they were being routinely used to defeat ‘the object of Parliament in getting women to assist in the administration of justice’.<sup>84</sup> It was still common at this time for a single jury to try multiple trials, an extreme example coming at Southampton in November 1923, where a jury of ten men and two women convicted one man of sacrilege, two of receiving stolen goods, two of setting fire to a haystack and one of bigamy, as well as acquitting one man of stealing a car, and acquitting another of perjury, all in a single day.<sup>85</sup> It is, therefore, possible to identify likely candidates for the use of peremptory challenges, even where they are not recorded, by identifying cases where women are removed from a pre-existing jury, but the jury is otherwise unchanged, and the offence type is not one from which women were habitually removed (on which more will be said below). In such circumstances, it is unlikely that the judge will have exercised his discretion to order a single-sex jury, meaning that their exclusion probably came from a use of the peremptory challenge.

There were many examples of this at the provincial assizes. Despite a judicial willingness to allow jurors to excuse themselves from trials they were likely to find upsetting (such as the two army veterans who, in 1920, were excused from serving

79. Anwar et al, above n 26, at 12.

80. Autumn 1920 Worcester assizes, in *Oxford Circuit 1914–1920*, p 490.

81. Summer 1921 Cornish assizes, in *Western Circuit 1920–1922*, unpaginated.

82. The crime statistics grouped together ‘Unnatural offences’, ‘Attempts to Commit Unnatural Offences’ and ‘Indecency with Males’: *Judicial Statistics (England and Wales for 1922, Criminal) (Annual Report)* Cmd 2265, 1924, p 15.

83. Lord Morris *Report of the Departmental Committee on Jury Service* Cmnd 2627, 1965, p 104.

84. ‘Antiquated power: recorder and right to challenge women jurors’ *Gloucester Citizen* (Gloucester) 25 September 1929 at 5.

85. Autumn 1923 Hampshire assizes, in *Western Circuit 1922–1925*, unpaginated.

on a murder trial owing to medically certified ‘nervous debility’),<sup>86</sup> many of these trials were not obviously any more upsetting than the preceding trials, making the jurors unlikely to be the source of the excusal, and making it unlikely that the judge had ordered a single-sex jury. At Norwich in January 1921, for example, a jury of two women and ten men had tried a man for aiding and abetting an act of bigamy. Later that day, the only other criminal trial at the Norwich assizes had a new jury sworn – ‘viz. same as above, except Thomas Ling instead of 9. Jessie Adelaide Groom and Walter George Sturgeon instead of 12. Alice Bertha Cannell’.<sup>87</sup> This second trial was for the fraudulent conversion of money meant for the Norfolk and Norwich Hospital: an offence unlikely to have produced a single-sex jury order, or a request by the women to be excused. With this case, as with many of the others, it is only possible to say that the women had been removed: the precise reason for their removal, or indeed the precise mechanism by which they were removed, is a question of necessarily imprecise interpretation. Occasionally, the records explicitly state that female jurors had been peremptorily challenged, as at Hampshire the following month. Here, three women had participated in a jury that had found a man guilty of stealing a horse; but when their second trial for larceny of a horse came up the assize records note that the women ‘are challenged by the prisoner’.<sup>88</sup> It is, nonetheless, impossible to identify every trial where jurors were peremptorily challenged.

A further reason why uses of these legal powers were not regularly recorded may have been that judges found other, quieter ways of accommodating their views about the types of trial which were unsuitable for female jurors. At the winter 1921 Wiltshire assizes, Bailache J warned his already-empanelled female jurors that

the next case was not a nice one at all and if the ladies wished it, he was prepared to excuse them from acting on the jury. They could remain if they liked. The ladies, on hearing this, appeared relieved, and left the court.<sup>89</sup>

On occasion, counsel asked the judge to make this kind of offer to the jury, as in a special jury trial at the High Court in December that year, where the future MP and later High Court judge JA Hawke KC said he thought the trial (‘a highly complicated business action’) ‘would confuse the women, and he was quite willing that they should be released and men substituted’. Unusually, one of the female jurors interrupted at this point, explaining ‘that she was intelligent enough to understand the action ... [T]he Lord Chief Justice [Baron Trevellyn] smoothed the ruffled waters by saying that any women who wished to go could leave the box.’<sup>90</sup> At this news, three of the five left, to be replaced by men. Two years later, at the Durham assizes, a woman asked to be exempted from jury service owing to her Quakerism. Roche J did not consider conscientious objection a good reason for a person to avoid jury duty, but was happy to excuse her nonetheless.<sup>91</sup>

These factors all introduced a large element of flexibility, raising the possibility of distinct regional practices developing: perhaps certain types of crime were considered

86. Autumn 1920 Sussex assizes, in *South Eastern Circuit 1919–1922*, p 244.

87. Winter 1921 Norwich assizes, in *South Eastern Circuit 1919–1922*, p 239.

88. Winter 1921 Hampshire assizes, in *Western Circuit 1920–1922*, unpaginated.

89. ‘Lady jurors excused: judge’s consideration at Wilts assize’ *Western Daily Press* (Bristol) 20 January 1921 at 8.

90. ‘Woman juror and KC’ *Hull Daily Mail* (Hull) 1 December 1921 at 3.

91. ‘Quaker objects: woman juror released at Durham’ *Sunderland Daily Echo* (Sunderland) 26 February 1923 at 5.



unsuitable for women by the regional Bar in some areas and not in others. It is also important to note the potential this flexibility had to dissuade local officials from summoning very many women in the first place: despite early fears that feminist barristers would seek to exclude all men from certain juries,<sup>92</sup> the pressure was entirely in the other direction, with predictable administrative consequences. As the *Dundee Evening Telegraph* explained, reflecting on Baron Trevethin's actions at the High Court discussed above:

If these precedents are extended, then, according to a Law Court view, the officers concerned in providing juries will have their work cut out to anticipate the Judge's mind. They work with a margin, consequently, it is pointed out, the inconvenience will fall ultimately on male jurymen, who are thus kept 'hanging about' in case they are wanted as substitutes for jurors allowed to depart if they wish to.<sup>93</sup>

Clearly, this was not only a question of administrative and legal decision making: the women in question were left with a choice in a way they were not where a judge simply ordered an all-male jury, as the fact two women chose to remain on Trevethin's jury shows; and various women's groups were keen to emphasise how irresponsible it was for women to voluntarily give up their newly won citizenship rights by stepping down from a jury.<sup>94</sup> But if the *Evening Telegraph's* law court contact was correct, this habit among certain judges of permitting their female jurors to decline to serve would have given local officials an incentive to stop summoning so many women. And this is precisely what happened: as the 1920s progressed, the number of women summoned declined, and so too did the numbers actually serving, even in regions such as the Midland circuit, which had started the decade with so many women on their juries.

#### 4. WERE WOMEN ROUTINELY REMOVED FROM CERTAIN TYPES OF TRIAL?

There was a widespread perception that women should (and did) not serve on juries for particular kinds of trial, but this perception did not always match reality. In 1924, when Rowlatt J presided over a public lecture on criminal law, he explained that the practice of using peremptory challenges to secure all-male murder juries 'had become in his experience universal'. In the five circuits studied in this paper, however, he is recorded as presiding over eight murder trials between 1921 and 1924, and of these only two had had all-male juries. Nonetheless, he thought the reasons for his claimed lack of women on juries in murder trials was obvious: while women would be overly moved by the sight of a 'weeping widow', men 'would take into account the surrounding circumstances, and any fact that told in favour of the prisoner'.<sup>95</sup> For Rowlatt, the reason why female jurors were apparently excluded from murder trials was simply that

**92.** Letter from Ernley Blackwell to Claud Schuster 9 December 1919 (National Archives: LCO 2/559) at 2.

**93.** 'Problem of the woman juror: has she proved a failure?' *Dundee Evening Telegraph* (Dundee) 7 December 1921 at 3.

**94.** See the newspaper articles cited at n 42. Sometimes judges also criticised women seeking to be excused for failing to take their newly won citizenship seriously: K Crosby 'Before the Criminal Justice and Courts Act 2015: juror punishment in nineteenth- and twentieth-century England' (2016) 36 *Legal Stud* 179 at 205.

**95.** 'The woman juror: a judge's experience in murder trials' *Tamworth Herald* (Tamworth) 15 March 1924 at 3.

they lacked the capacity to see past their own emotions. If women were to intrude into the jury box at all, they ought to be restricted to less emotive trials. And as we shall see below, juries containing no women were particularly rare in trials for property offences.

Against this backdrop, of a public commitment to the idea that women should not sit as jurors in certain ‘shocking’ types of trial, several women’s groups made the argument – dramatised in Belloc Lowndes’ *What Really Happened* – that women were better placed than men to judge the testimony of women and children.<sup>96</sup> This was a potentially powerful argument: in the assize trials surveyed here, women and children appeared as defendants or as victims in 2142 trials (49%); and even this overlooks those trials where women or children were neither victims nor defendants, but appeared nonetheless as witnesses. The one time some people making these arguments might concede it was appropriate to have an all-male jury was where a jury was required to judge offences committed by men against other men, as female experience was considered less essential here to the production of a fair verdict.<sup>97</sup> This would appear to be a necessary corollary to the general argument, implicitly adopting the terms of the argument against female jurors, that they were particularly needed in cases involving women or children.

The fact that judges frequently invited women to decide whether they wanted to serve in ‘shocking’ trials brought female jurors’ own understanding of their role into the public debate. When McCardie J made such an offer in a male-only sexual offence trial at King’s Bench in 1922, two of the three women stayed. He congratulated them for their ‘courage’, and one replied ‘We think that if we are called at all we ought to sit, whatever the nature of the case.’<sup>98</sup> When the *Yorkshire Post* interviewed a recent female juror in 1921, she explained it might be better if women were excused from unsavoury divorce cases, but that if she was called to serve on such a jury she would do her duty.<sup>99</sup> The actress Marie Studholme, asked in 1922 about her experiences as a juror, said ‘I think it is right ... that women should take their place on the jury.’ Reflecting on the recent trial of Frederick Bywaters and Edith Thompson for the murder of Thompson’s husband, however, she added ‘I should shrink from such an ordeal as the woman juror experienced recently at the Old Bailey in the Ilford case.’<sup>100</sup> As Bland has explained, the Ilford case was used by the press to criticise modern women for their regular attendance in the public gallery: ‘if they were so obsessed with seeking sensation, how could they judge impartially?’<sup>101</sup>

Studholme’s comments were only hypothetical, however, and were not informed by any actual experience of serving on a homicide trial. Those who did serve on murder trials frequently found the experience difficult to forget. A woman who had served on a Leeds assize jury in a murder trial, in circumstances that would soon become the non-capital offence of infanticide,<sup>102</sup> suggested that ‘women liable to serve on juries should band themselves together, and refuse to be placed in the position of being

96. Logan, above n 31. See also DJR Grey ‘Women’s policy networks and the Infanticide Act 1922’ (2010) 21(4) *Twentieth Century Br Hist* 441 at 444–445.

97. See eg ‘Women jurors: Lady Mabel Smith’s view’ *Yorkshire Post* (Leeds) 4 February 1921 at 4.

98. ‘Judge and lady jurors: grim questions which arise in court’ *Northern Daily Mail* (Hartlepool) 3 November 1922 at 8.

99. ‘Delicacy and duty – do they conflict? A lady juror’s view’ *Yorkshire Post* (Leeds) 27 January 1921 at 6.

100. ‘Marie Studholme a juror’ *Hull Daily Mail* (Hull) 15 December 1922 at 3.

101. Bland, above n 48, p 120.

102. Grey, above n 96.

obliged to cause such a monstrous sentence to be passed on a fellow woman'.<sup>103</sup> Another Leeds woman, who had served on the trial of a man for murdering his wife, revealed to the local press her jury's agonised attempts to reach a fair verdict, and her own guilt about depriving the couple's children of a second parent.<sup>104</sup> The fact these sorts of detailed questions were only generally put to women who had sat on 'shocking' trials may have helped to reinforce the public perception that female jurors ought to be excluded from particular types of trial.

As we have seen, there was a perception that women *should* be routinely removed from particular types of trial, and also that they *were* regularly removed. We have also seen how this kind of public perception might have discouraged local officials from summoning as many women as they might otherwise have done. This does not mean that court officials were entirely neutral, however. In 1921, Stephen Coleridge, clerk of assize for the South Wales circuit and son of the former Lord Chief Justice, complained to *The Times* about whoever it was

who was the extraordinary person responsible for forcing Clerks of Assize to call men and women indifferently and together to decide the question of guilt or innocence in cases of rape, or bestiality, or other unspeakable crimes ... It is a loathsome duty for 12 men or for 12 women to discuss with each other the disgusting details of this sort of case, but no one should have the 'option' of forcing men and women to discuss them together.<sup>105</sup>

There is, indeed, evidence that all this resulted in women being routinely removed from particular classes of trial. In their analysis of Old Bailey trials between 1921 and 1926, Anwar et al found that 44% of rape trials had all-male juries, and that for other sexual offences, 63% of juries were all-male.<sup>106</sup>

Given the different local histories at play, however (not to mention the fact that each barrister belonged in principle to *one* assize circuit), it would be surprising if female jury service looked the same throughout England and Wales. The use of peremptory challenges to keep women off the jury, for example, had caused particular problems in Leicestershire in 1921. Edith Roberts had been convicted of killing her newborn child. Following challenges to all the women jurors, her jury had eventually contained only men. A crowd of 500 gathered at Leicester, demanding that 'it should be made impossible in cases of this nature for women to be precluded from serving on a jury'. The crowd did not get their wish, but the scandal surrounding Roberts' conviction did lead to the creation of the non-capital crime of infanticide.<sup>107</sup> In the previous year, there had been a clash at the Western circuit between the clerk of assize (supported by the government's law officers) and county and borough officials (supported by the Home Office) regarding the legality of local officials summoning jurors according to custom, rather than statute. One argument used against the local officials was that their customary practices offered no guarantee that women would be called upon to serve.<sup>108</sup>

**103.** 'Our readers' views: women jurors and capital punishment' *Yorkshire Evening Post* (Leeds) 21 March 1921 at 7.

**104.** 'Woman juror's ordeal at murder trial' *Yorkshire Evening Post* (Leeds) 22 March 1922 at 7. It cannot have helped that she lived very near the prison where her defendant was held.

**105.** S Coleridge 'Women as jurors' *The Times* (London) 2 February 1921 at 6.

**106.** Anwar et al, above n 26, at 16.

**107.** Grey, above n 96, at 445–447.

**108.** Darling J's address at Bristol, as recorded by LC Danger (Bristol Clerk of the Peace), 4 May 1920 (National Archives: HO 45/11071/383085/27a).

The fact that different regions had had such different experiences of the introduction of women on to their juries means that we should ask whether the practices recorded at the Old Bailey, of excluding female jurors from sexual offence trials between 44% and 63% of the time, were replicated elsewhere.

Table 3 reports the percentage of trials in each of nine offence types with all-male juries. A series of chi-square tests found that, for each circuit, there was a highly significant difference among the percentage of all-male juries in the different categories of crime ( $p < 0.001$  for each circuit). The 'Adjusted residual' column, calculated using SPSS, shows which offence types had greater or fewer all-male juries than would be expected given the number of trials and the regional average. Statisticians explain that, for a chi-square table with many categories, a particular category is significantly different from the overall distribution where the adjusted residual is more than about  $\pm 3$ <sup>109</sup> or, where the data is being used 'as a guide to what might be of interest', where it is more than about  $\pm 2.58$ .<sup>110</sup> For male-only sexual offences, the adjusted residual score goes well beyond  $\pm 3$  in all five circuits; and for property offences the test is passed in three out of five circuits. In other words, comparing all-male juries for each offence type to the regional average, they were far more likely in male-only sexual offences in all five circuits; while they were less likely in property offences in three out of five circuits. This suggests a strong agreement, throughout much of the country, that male-only sexual offences were extremely unsuitable for female jurors, and that property offences were among the most suitable offences for women to try.

Four more offence types – homicide and offences against the state in the South Eastern circuit; non-fatal offences against the person in South Wales; and other sexual offences in the Western circuit – meet the 'guide to what might be of interest' test, with adjusted residuals of over  $-2.58$ . The fact that each of these offence types only appears in this list once (ie that there was only a large difference regarding, eg, non-fatal offences in one of the five circuits) suggests that different local Bars may have had different ideas about which sorts of trials women should and should not be permitted to serve on. It is also notable that these indicative differences are all in the South of England or South Wales, where female participation on assize juries was generally lower anyway. In the Midlands, where female participation on assize juries was higher, there are no sizable differences in the percentage of all-male juries beyond the two offence types – male-only sexual offences and property offences – where there was a national consensus that female jurors were either particularly welcome or particularly unwelcome. A stronger tradition of including women on assize juries correlates with a general indifference to the types of crime where female jurors should appear; while in those places where female jurors were less common in general, greater local differences emerged regarding the types of crime where women did or did not appear as jurors.

Given that the Midland barristers' association took decades to admit women to the privileges of formal membership (regular dinners with the judges, for example, to say nothing of the discounted hotel rates that would have made their professional existence much easier),<sup>111</sup> it can hardly be said that the local legal culture of the

**109.** A Agresti *An Introduction to Categorical Data Analysis* (Hoboken, NJ: Wiley, 2nd edn, 2007) p 38.

**110.** D Sharpe 'Your chi-square test is statistically significant: now what?' (2015) 20(8) *Prac Assess Research & Eval* 1 at 3.

**111.** Corcos, above n 65, at 398–399.

Table 3: The percentage of cases tried by all-male juries, by offence type, 1921–1929

Offence type	Midland			Oxford			South Eastern			South Wales			Western		
	% all-male	Adjusted residual	n (total)	% all-male	Adjusted residual	n (total)	% all-male	Adjusted residual	n (total)	% all-male	Adjusted residual	n (total)	% all-male	Adjusted residual	n (total)
Homicide	17	-1.1	171	20	-0.2	158	16	-3.1	180	24	-1.1	90	26	-0.8	78
Non-fatal offences against the person	17	-0.5	69	14	-1.4	70	14	-2.4	80	17	-2.7	88	20	-1.5	41
Abortion, concealment etc	20	0.0	40	6.7	-1.9	30	23	-0.3	22	20	-0.7	10	11	-1.8	18
Male-only sexual offences	96	14.6	55	92	10.9	37	91	14.3	84	94	8.6	35	95	13.3	77
Other sexual offences	17	-1.5	246	20	-0.4	207	29	1.4	245	36	1.8	142	21	-2.6	147
Bigamy	6	-2.5	50	10	-1.3	21	18	-1.1	49	29	-0.1	21	23	-0.9	39
Property offences	14	-3.2	328	18	-1.6	268	19	-3.9	414	24	-2.5	252	18	-4.5	202
Offences against the state	17	-0.5	41	11	-1.7	45	4	-2.6	27	31	0.4	99	29	0.0	17
Other	19	-0.1	16	38	1.2	8	22	-0.4	27	9	-1.5	11	33	0.1	3
Overall	20	1016	21	844	25	1128	30	+11.	748	30	622				

Sources: Crown minute books for the Midland, Oxford, South Eastern and South Wales Circuits, 1921–1929; Western Circuit, 1921–1925.

Midland circuit was a feminist utopia. It can, however, be said with certainty that local officials here were paying attention, given the technically superfluous comments and cuttings on female jurors that appear reasonably regularly in the circuit's Crown minute book during the 1920 and 1921 sessions. Equally, the dispute between the clerk of assize for the Western circuit and various town and county officials regarding their customary practices for the summoning of jurors suggests that the assize officials here took a strict, officious approach to the running of the circuit's affairs. It may have been that the local Bar shared a broad approach to female jurors with their assize officials. But it should also be noted that, when the Home Office asked Darling J to explain his objection to the customary method of summoning jurors at the Bristol assizes in early 1920, he explained that the circuit clerk had better explain as it had been the clerk's idea to confront the Bristolian authorities.<sup>112</sup> While it is difficult to disaggregate the influence over female jury composition coming from the local Bar and from the local administration, it is clear that different circuits had different views about the kinds of trial that it was appropriate for women to try as jurors.

## CONCLUSIONS

In 1951, the Home Office was asked to look into juror summoning practices at the Leicester assizes. A local accountant had complained that he had served at the borough assizes four times in the past 8 years, despite there being over 7000 people qualified for jury service in the city and approximately 1000 jurors being summoned to the assizes each year.<sup>113</sup> After several seemingly wilfully unhelpful responses to the Home Office's inquiries, the authorities at Leicester eventually revealed they had been ignoring the law on jury selection for at least 30 years. The relevant impropriety as far as the accountant was concerned was that, for every 300 jurors summoned, approximately 20 reliable, experienced jurors would be deliberately summoned, and the accountant had had the misfortune to find himself on one of the lists of good jurors. While the Home Office eventually secured a promise that the practice at Leicester would change, officials privately recognised that there was very little they could actually do short of a parliamentary inquiry.<sup>114</sup>

It is possible that such practices continued even after the 1950s, with a randomised, computerised system for the selection of jurors only coming into existence in 1981.<sup>115</sup> In our period, the 'assize boroughs' had not lost their right to ignore the property qualifications until 1920. In any event, when tracing the gender composition of the juries at the five assize circuits studied here, it becomes clear that women were much better represented on juries in some regions than in others. It is possible that Midlands women were far wealthier than the women of southern England, meaning many more of them were qualified to serve; but the survey of juror qualification at Bristol, Leicester

112. Letter from Darling J to Edward Troup, 24 May 1920 (HO 45/11071/383085/30).

113. The fact that so many jurors were needed per session suggests that the practice of using the same jury for several trials had probably ended.

114. 'Juries: persons frequently summoned for service on, in Leicester' (HO45/24646/59).

115. S Lloyd-Bostock and C Thomas 'The continuing decline of the English jury' in Vidmar, above n 18, p 70. See also Auld LJ *Review of the Criminal Courts of England and Wales* (London: HMSO, 2001) p 141; and K Gallagher 'Modernisation of justice through technology and innovation' Modernising Justice through Technology, Innovation and Efficiency conference, London, 20 July 2016; available at <https://www.gov.uk/government/speeches/modernisation-of-justice-through-technology-and-innovation> (accessed 26 July 2016).

and Norwich does not suggest that this is likely. This possibility would also fail to explain why as the decade continued there would be fewer female jurors in each circuit, at the same time that the rate of female jurors was increasing in the capital. Local administrative discretion must be part of the answer.

We have seen that there was much public debate about the use of female jurors during the 1920s, and we have also seen that much of this debate concerned the types of trial that were or were not suitable for women. Much of the pro-female juror argument sought to advance women's involvement in public life by, paradoxically, drawing on traditional understandings of feminine roles. Because women were mothers, and because they often had experience of a peculiarly feminine, caring type of public service (as Belloc-Lowndes' Nora Norwich did), it was assumed that they could understand women of all social backgrounds in a way men could not hope to do. Women must, therefore, appear as jurors wherever they also appear as defendants, as victims or as witnesses. But in maintaining that there were some types of trial where women were particularly needed, such arguments may have helped to legitimise their counterpart: that there were some types of trial that women could not endure. The success of all these arguments will have largely depended on their reception by the lawyers, and so another part of any explanation for the variable appearance of women on the provincial assize juries must be the attitudes of the different regional Bars. This is something of which it is difficult to find direct evidence, but that can be inferred from the patterns of all-male juries discussed above.

Lawyers at the assizes frequently invited women to decline to serve, or when they were acting more formally they used the opportunities given them by s 1(b) of the 1919 Act or their peremptory challenges in order to achieve the same end. But despite the common argument that women were particularly (un)necessary in particular types of case, it is only in male-only sexual offences and in property offences where they were either more or less likely to be excluded from assize juries throughout the country. Regional factors meant that all-male juries were less likely in trials for homicide or for offences against the state in the South-East of England, less likely in trials for non-fatal offences against the person in South Wales, and less likely in trials for sexual offences involving females in the South West of England. Government had attempted to guarantee consistency, by requiring that the gender balance of those called to serve matched that of the local population, subject always to a minimum of 14 female jurors; and by abolishing the assize boroughs' discretion to follow local custom when summoning their jurors. Local factors were, nonetheless, a stubbornly consistent factor in the first decade of female jury service. By recognising this fact, we can see just how uneven the female jury franchise was in its early years, and just how much it had to be fought for by those who thought women should no longer be kept off the jury.